

Translation

# PATENT COOPERATION TREATY PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>10850 PCT</b>	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/000295</b>	International filing date ( <i>day/month/year</i> ) <b>16.01.2004</b>	Priority date ( <i>day/month/year</i> ) <b>25.03.2003</b>
International Patent Classification (IPC) or national classification and IPC   		
<b>Applicant</b> <b>GUTEHOFFNUNGSHÜTTE RADSATZ GMBH</b>		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p>	<p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>2</u> sheets, as follows:</p>	<p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p>	<p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s))   containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																																																																								
<p>4. This report contains indications relating to the following items:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15px;"><input checked="" type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> <td style="width: 15px;"><input checked="" type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> <td style="width: 15px;"><input type="checkbox"/></td> </tr> <tr> <td>Box No. I</td> <td>Basis of the report</td> <td></td> <td></td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. II</td> <td>Priority</td> <td></td> <td></td> <td>Lack of unity of invention</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. III</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. IV</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. V</td> <td></td> <td></td> <td></td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. VI</td> <td>Certain documents cited</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. VII</td> <td>Certain defects in the international application</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Box No. VIII</td> <td>Certain observations on the international application</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Box No. I	Basis of the report			Non-establishment of opinion with regard to novelty, inventive step and industrial applicability				Box No. II	Priority			Lack of unity of invention				Box No. III								Box No. IV								Box No. V				Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement				Box No. VI	Certain documents cited							Box No. VII	Certain defects in the international application							Box No. VIII	Certain observations on the international application						
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/000295

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- international search (Rule 12.3 and 23.1(b))
  - publication of the international application (Rule 12.4)
  - international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- the international application as originally filed/furnished  
 the description:

pages 1-19 as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- the claims:

nos. 2-33 as originally filed/furnished

nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19  
22.10.2004 with the

nos.\* 1 received by this Authority on letter of 20.10.2004

nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- the drawings:

sheets 1/8-8/8 as originally filed/furnished

sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3.  The amendments have resulted in the cancellation of:

- the description, pages \_\_\_\_\_
- the claims, nos. \_\_\_\_\_
- the drawings, sheets/figs \_\_\_\_\_
- the sequence listing (*specify*): \_\_\_\_\_
- any table(s) related to sequence listing (*specify*): \_\_\_\_\_

4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages \_\_\_\_\_
- the claims, nos. \_\_\_\_\_
- the drawings, sheets/figs \_\_\_\_\_
- the sequence listing (*specify*): \_\_\_\_\_
- any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.	PCT/EP2004/000295
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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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## 1. Statement

Novelty (N)	Claims	5, 6, 22-24, 26, 27, 29-33	YES
	Claims	1-4, 7-21, 25, 28	NO
Inventive step (IS)	Claims		YES
	Claims	1-33	NO
Industrial applicability (IA)	Claims	1-33	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

1. Independent claim 1

The application fails to meet the requirements of PCT Article 33(1) because the subject matter of **claim 1** is not novel (PCT Article 33(2)).

As stated in the first report of the International Searching Authority, the features specified in the preamble of the amended claim 1 submitted with the letter of 20 October 2004 (L1) are already known from document D1. The additional features specified in the characterising part of the claim are also known from D1, as follows:

- 1.1 In D1, the profilogram (80) relates to a non-wearing wheel rim inner diameter (22a) as a fixed basic geometric variable that remains constant over a long period (see figures 3 and 10; column 9, lines 23 to 37; and column 17, lines 53 to 54).

The argument put forward in L1 stating that "reference groove point 22a" is calculated on the basis of a "tread surface point 24a" on the wearing face of the

## Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

wheel is not compelling because what is described in D1 is different. The point (22a) is defined and recorded as the lowest point in the groove (22) lying on the non-wearing inside (83) of the wheel (see figures 3 and 10; column 17, lines 53 to 54; and column 9, lines 23 to 37). A dimension (88) is calculated as the difference between points (24b) and (22a). In particular, point (22a) is a given absolute reference, not the result of this calculation.

- 1.2 In D1 the basic variable is obtained from three measured values (see column 13, lines 49 to 50) obtained by contactless dynamic measurements on the moving solid (see column 9, line 59 to column 10, line 2). The measurements are taken in the same way as the profilogram (see figure 3, lines 28 to 37). Contrary to what is argued in L1, the basic variable is defined by point (22a) as an independent variable which is measured by laser triangulation (see figure 3 and column 9, lines 28 to 30).
- 1.3 The system of equations at the end of claim 1 is implicitly known from D1 (see columns 14 to 16). The system of equations and the corresponding calculation process are simple geometric relations that can be used for all the main dimensions (see column 14, lines 18 to 23). The case involving three measurement points is also known from D1 (see column 16, lines 6 to 16).

2. Dependent claims 2 to 31

Dependent claims 2 to 31 do not contain any features

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Box No. V	<b>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</b>  that meet the PCT requirements in respect of novelty or inventive step when combined with the features of any of the back-referenced claims. The reasons for this were given in the first report of the International Searching Authority.
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**Supplemental Box****In case the space in any of the preceding boxes is not sufficient.****Continuation of:****Box I****Basis of the report**

The applicant's letter of 20 October 2004 (see column V) describes amendments to the dependent claims that were not in fact made or submitted as part of the amended application. Under PCT Rule 66.8 the applicant is required to submit replacement sheets for all amendments. The International Searching Authority can therefore only consider the version of claim 1 submitted with the letter of 20 October 2004. It is also worth noting that even if the aforementioned amendments were to be taken into consideration, the conclusion reached in the report on novelty and inventive step would still be negative.